IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

OP.No. 8327 of 1999(N)

PETITIONER:

M.K.AYYAPPAN,
MANAGER, KAMCO LTD.,
KALAMASSERY UNIT, I.D.PLOT P.O.,
KALAMASSERY.

BY ADV. SMT.I.SHEELA DEVI

RESPONDENTS:
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1. **KERALA AGRO MACHIENRY CORPORATION LTD., REPRESENTED BY ITS MANAGING DIRECTOR, ATHANI, ERNAKULAM DISTRICT.**

2. **BOARD OF DIRECTORS OF KERALA AGRO MACHINERY CORPORATION LTD., REPRESENTED BY ITS CHAIRMAN, ATHANI, ERNAKULAM DISTRICT.**

3. **MANAGING DIRECTOR, KERALA AGRO MACHIENRY CORPORATION LTD., ATHANI, ERNAKULAM DISTRICT.**

BY ADV. SRI.A.K.JAYASANKAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 0706/2007 ALONG WITH OP NO. 8570 OF 1999, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.8327/1999 N

ORDER ON C.M.P.NO.13896/1999 IN O.P.NO.8327/1999 N

DISMISSED

07/06/2007 SD/- THOTTATHILB.RADHAKRISHNAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE MEMO NO.PD/27 DTD. 31/01/1996 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

EXT.P2: COPY OF THE REPLY DTD. 5/02/96 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXT.P3: COPY OF THE CHARGE SHEET 19/02/96 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

EXT.P4: COPY OF THE COMMUNICATION DTD. 15/03/96 SENT BY THE 3RD RESPONDENT TO THE PETITIONER.

EXT.P5: COPY OF THE CHARGE SHEET DTD. 22/03/1996 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

EXT.P6: COPY OF THE REPLY DTD. 25/03/96 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXT.P7: COPY OF THE ORDER DTD. 1/04/1996 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

EXT.P7(A): COPY OF THE JUDGMENT IN O.P.NO.7946/1996 U DTD. 21/06/1996 ISSUED BY THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM.

EXT.P8: COPY OF THE ENQUIRY REPORT SUBMITTED BY THE ENQUIRY OFFICER DTD. 14/09/96.

EXT.P9: COPY OF THE DEPOSITION OF MR. ZOEB ALI (MW2) OF AGRO MACHINERY WORKS.

EXT.P10: COPY OF THE LETTER NO.786/110/2 DTD. 3/11/1995 SENT BY MR. ZOEB ALI, OF AGRO MACHINERY WORKS TO THE MANAGING DIRECTOR, KAMCO (EXT.22 MARKED BY THE MANAGEMENT IN THE ENQUIRY)

...2/-

EXT.P11: COPY OF THE LETTER NO.786/110/5 DTD. 11/11/95 PURPORTEDLY SENT BY MR. ZOEB ALI FOR AGRO MACHINERY WORKS TO THE MANAGING DIRECTOR, KAMCO (EXT.23 MARKED BY THE MANAGEMENT IN THE ENQUIRY).

EXT.P12: COPY OF THE LETTER NO.786/110/11 DTD. 7/12/95 SENT BY MR. ZOEB ALI OF AGRO MACHINERY WORKS TO THE MANAGING DIRECTOR, KAMCO (EXT.24 MARKED BY THE MANAGEMENT IN THE ENQUIRY).

EXT.P13: COPY OF THE COMMUNICATION DTD. 19/09/96 ISSUED BY THE MANAGING DIRECTOR KAMCO TO THE PETITIONER.

EXT.P14: COPY OF THE EXPLANATION DTD. 3/10/96 SUBMITTED BY THE PETITIONER BEFORE THE MANAGING DIRECTOR KAMCO,

EXT.P15: COPY OF THE RELEVANT EXTRACT OF THE KAMCO STAFF BYELAWS 1973.

EXT.P16: COPY OF THE ORDER DTD. 21/12/1996 ISSUED BY THE MANAGING DIRECTOR, KAMCO TO THE PETITIONER.

EXT.P17: COOPY OF THE REVIEW PETITION DTD. 21/01/1997 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P18: COPY OF THE COMMUNICATION DTD. 5/04/97 SENT BY THE MANAGING DIRECTOR, KAMCO TO THE PETITIONER.

EXT.P19: COPY OF THE JUDGMENT IN O.P.NO.13146/1997 M DTD. 2/4/1998 ISSUED BY THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM.

EXT.P20: COPY OF THE ORDER OF THE BOARD OF DIRECTORS OF KAMCO DTD. 25/11/1998.

EXT.P21: COPY OF THE REPRESENTATION DTD. 25/02/1999 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

/TRUE COPY/

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THOTTATHIL B.RADHAKRISHNAN, J.

O.P.Nos.8327 & 8570 OF 1999

Dated this the 7th day of June, 2007

JUDGMENT

These writ petitions are by two employees of the Kerala Agro Machinery Corporation Ltd., a Government company, hereinafter referred to as 'KAMCO'. They were in the managerial cadre. The then Managing Director appears to have held out certain communications from one Zoeb Ali, accusing the petitioners of acting against the interest of KAMCO, which is a manufacturer of power tillers. The business activities of KAMCO is the manufacture and supply of power tillers and spares through its authorised dealers. The manufacturing of the components and spare parts are done by engaging small manufacturers by providing them the technical knowhow in the form of drawings and specifications. It appears that one Gopalakrishnan, who was actively involved in the business activities of a private firm by name M/s.Automugal (P) Ltd., was involved in clandestine transactions, misusing the business interests of KAMCO. Certain products were passed off as of they

are KAMCO products. The petitioners allegedly have nexus to such activity.

2. The disciplinary proceedings against the petitioners resulted in their being imposed with a punishment of removal from service. Ultimately, by a review before the Board of Directors, as per the impugned Ext.P20, the punishment of removal from service was reduced and the petitioners were punished of reduction in rank.

3. Learned counsel for the petitioners seriously canvassed that the finding that the petitioners were involved in the alleged clandestine transactions is baseless. It was urged that the findings arrived at are perverse and, as a consequence, according to the learned counsel for the petitioners, the imposition of punishment is unauthorised. It was further urged that the sub committee report relied on by the Board of Directors, during the review proceedings, were not put to the petitioners for being commended upon before the Board.

4. Per contra, learned counsel for the employer KAMCO argued that even a mere reading of the impugned Ext.P20 review order would show that the entire facts, circumstances and evidence have been taken into account and a just and reasonable conclusion has been arrived at, but, for which, the penalty of removal from service would not have been reduced. Relying on the materials on record, it is further argued that the petitioners were given all relevance for whatever could be found in the evidence as not convincing to an unbiased administrative authority. It is also pointed out that having regard to the fact that the petitioners were in the managerial position in the business establishment, imposition of punishment, as per the impugned Ext.P20, cannot be treated as excessive.

5. In considering the review, it is apparent from the face of Ext.P20 that the entire materials on record have been taken note of. The Board of Directors did not even feel confident to accept in full the reliability of the letters which were allegedly sent by the aforesaid Zoeb Ali. They had solid reasons for doing so. They found that the Inward Register of the company did not

register the receipt of that letter. A separate Inward Register maintained by the Managing Director's office also did not register receipt of that letter. The then Managing Director had not even marked about the receipt of that letter. All these were taken into consideration by the Board because it was a contention of Zoeb Ali that those letters were despatched from Calcutta. The Board did not give any wait for the stand taken by Zoeb Ali. But the aforesaid Gopalakrishnan, as DW16, had deposed that the delinquents (writ petitioners) were closely associated with him and the wife of M.K.Ayyappan, the petitioner in O.P.No.8327/99, was, in fact, a partner in his business activities. Under such circumstances, the finding arrived at by the Board of Directors in Ext.P20 that there is sufficient evidence to prove the connection of the writ petitioners with Gopalakrishnan and there was some assistance from M.K.Ayyappan with the said Gopalakrishnan in the clandestine deal cannot be treated as perverse or unavailable on the materials on record. Under such circumstances, I do not find any ground to interfere with the findings of facts entered into by the Board of Directors of KAMCO in Ext.P20.

6. Having found no ground to interfere with the findings of facts, the contention of the petitioners that they were not given the report of the sub committee requires to be considered. In the counter affidavit, respondents have explicitly stated that the records were so voluminous that the Board of Directors found it advisable on the administrative side to have a sub committee constituted for looking into the entire materials and placing a sub committee report before them. Such a procedure in the realm of administration cannot be treated as unauthorised or beyond the bounds of law and procedure, particularly when the findings rendered on the basis of that sub committee report stands on the basis of the entire evidence.

7. On to the question of the quantum of punishment, while it is the admitted situation that the petitioners belong to a business establishment, discipline with competitive business for such an establishment is a matter that the employees have to ensure. Having regard to the gravity of the proved charge, I do not find that the punishment imposed is disproportionate.

In the aforesaid reasons, this writ petition fails, The same is accordingly dismissed. No costs.

Sd/-

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NOS.8327 & 8570 OF 1999

JUDGMENT

6th JUNE, 2007.

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